

## **2005 DRAFTING REQUEST**

### **Bill**

Received: **10/05/2004**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Joseph Leibham (608) 266-2056**

By/Representing: **Patrick**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**  
**Criminal Law - law enforcement**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Leibham@legis.state.wi.us**

Carbon copy (CC:) to:

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Seizure and disposition of computers used to commit crimes

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### **Instructions:**

2003 SB-403

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida	kfollett					S&L
	10/05/2004	10/05/2004					
	mdsida	csicilia					
	01/31/2006	02/02/2006					
/1			jfrantze		mbarman	lemery	
			02/02/2006		02/02/2006	02/03/2006	

FE Sent For:

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/?	mdsida 10/05/2004 mdsida 01/31/2006	kfollett 10/05/2004 csicilia 02/02/2006		_____ _____ _____ _____			S&L
/1			jfrantze 02/02/2006	_____ _____	mbarman 02/02/2006		

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Subject: Criminal Law - miscellaneous  
Criminal Law - law enforcement

Extra Copies:

CMH

Submit via email: YES

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Carbon copy (CC:) to: RLR, CMH

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1/?	mdsida	1 cjs 2/2 2/2	2/2 2/2	2/2 2/2			

FE Sent For:

<END>

10/5

Plc to Patrick

Should police be required to purge all?  
What if they want to use it for subseq. investigation?

He will let me know

11/8/05 - lett msg for Greg

Delete report for retained pictures

TODAY AM

# 2003 SENATE BILL 403

January 21, 2004 - Introduced by Senators LEIBHAM and SCHULTZ, cosponsored by Representatives PETTIS, LADWIG, JESKEWITZ, MUSSER, SERATTI, OLSEN, PETROWSKI, HINES, MCCORMICK, OTT, VRAKAS, ALBERS, VAN ROY and TAYLOR. Referred to Committee on Judiciary, Corrections and Privacy.

Regen cat.

1 AN ACT *to repeal* 973.075 (1) (b) 2m. c.; *to renumber and amend* 961.55 (1) (d)  
2 (intro.), 961.55 (1) (d) 1., 961.55 (1) (d) 2., 961.55 (1) (d) 3. and 961.55 (1) (d) 4.;  
3 *to amend* 961.55 (3) (intro.), 961.55 (5) (intro.), 968.20 (1) (intro.), 973.075 (1)  
4 (b) 1m. (intro.), 973.075 (1) (bg), 973.075 (1) (bj), 973.075 (1) (bm), 973.075 (1)  
5 (d), 973.075 (1) (e), 973.075 (4) and 973.075 (5) (intro.); and *to create* 961.55 (1)  
6 (h), 961.55 (5) (am), 961.55 (5r), 973.075 (1) (f), 973.075 (1p) and 973.075 (5r)  
7 of the statutes; **relating to:** seizure of a computer used to commit a crime and  
8 providing a penalty.

## Analysis by the Legislative Reference Bureau

Under current law, the state or a local law enforcement agency may acquire certain property involved in the commission of crime through a forfeiture proceeding, which is generally initiated after the end of the criminal case to which it relates. The forfeiture law applies to all property directly or indirectly derived from the commission of a crime. It also covers certain other property related to the commission of a crime, including: 1) an illegal controlled substance and equipment used in committing a crime relating to a controlled substance; 2) a vehicle used to transport property used or received in committing a felony; 3) a vehicle used in committing a crime relating to prostitution; 4) property used in committing a stalking offense or

**SENATE BILL 403**

a criminal violation of a domestic abuse, child abuse, or harassment restraining order or injunction; and 5) pirated, bootlegged, and counterfeit recordings and any equipment used to make them. Current law also permits the state or a local law enforcement agency to retain contraband that it has seized, which includes machines or materials (including computers) that are used to create other contraband items.

Under this bill, a computer that is used, with the knowledge and consent of its owner, in the commission of a crime is subject to forfeiture, regardless of whether it is contraband. If a computer is forfeited under the bill, the law enforcement agency that seized it may retain it for its own use, donate it to a nonprofit organization or another government agency, or sell it and retain 50% of the proceeds of the sale (with the remainder being deposited in the school fund). *percent*

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 961.55 (1) (d) (intro.) of the statutes is renumbered 961.55 (1) (d)  
2 1m. and amended to read:

3           961.55 (1) (d) 1m. All Subject to sub. (1p) and except as provided in subd. 2m.,  
4 all vehicles which are used, or intended for use, to transport, or in any manner to  
5 facilitate the transportation, for the purpose of sale or receipt of property described  
6 in pars. (a) and (b) or for the purpose of transporting any property or weapon used  
7 or to be used or received in the commission of any felony under this chapter, ~~but~~.

8           **SECTION 2.** 961.55 (1) (d) 1. of the statutes is renumbered 961.55 (1) (d) 2m. a.  
9 and amended to read:

10           961.55 (1) (d) 2m. a. No vehicle used by any person as a common carrier in the  
11 transaction of business as a common carrier is subject to forfeiture under this section  
12 unless it appears that the owner or other person in charge of the vehicle is a  
13 consenting party or privy to a violation of this chapter.

14           **SECTION 3.** 961.55 (1) (d) 2. of the statutes is renumbered 961.55 (1) (d) 2m. b.  
15 and amended to read:

## SENATE BILL 403

1           961.55 (1) (d) 2m. b. No vehicle is subject to forfeiture under this section by  
2       reason of any act or omission established by the owner thereof to have been  
3       committed or omitted without the owner's knowledge or consent. This subdivision  
4       subd. 2m. b. does not apply to any vehicle owned by a person who is under 16 years  
5       of age on the date that the vehicle is used, or is intended for use, in the manner  
6       described under ~~par. (d) (intro.)~~ subd. 1m., unless the court determines that the  
7       owner is an innocent bona fide owner.

8           **SECTION 4.** 961.55 (1) (d) 3. of the statutes, as affected by 2003 Wisconsin Act  
9       49, is renumbered 961.55 (1) (d) 2m. c. and amended to read:

10          961.55 (1) (d) 2m. c. A vehicle is not subject to forfeiture for a violation of s.  
11       961.41 (3g) (b) to (g); and.

12          **SECTION 5.** 961.55 (1) (d) 4. of the statutes is renumbered 961.55 (1p) and  
13       amended to read:

14          961.55 (1p) If forfeiture of a vehicle property encumbered by a bona fide  
15       perfected security interest occurs under sub. (1) (d) or (h), the holder of the security  
16       interest shall be paid from the proceeds of the forfeiture if the security interest was  
17       perfected prior to the date of the commission of the felony which forms the basis for  
18       the forfeiture and he or she neither had knowledge of nor consented to the act or  
19       omission.

20          **SECTION 6.** 961.55 (1) (h) of the statutes is created to read:

21          961.55 (1) (h) Subject to sub. (1p), any computer, as defined in s. 943.70 (1) (am),  
22       used, with the knowledge and consent of its owner, in the commission of a crime  
23       under this chapter.

24          **SECTION 7.** 961.55 (3) (intro.) of the statutes is amended to read:

## SENATE BILL 403

## SECTION 7

1 961.55 (3) (intro.) In the event of seizure under sub. (2), proceedings under sub.  
 2 (4) shall be instituted promptly. All dispositions and forfeitures under this section  
 3 and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent  
 4 persons under ~~sub. subs.~~ (1) (d) ~~1., 2. 2m. a. and b. and 4. Any (1p).~~ Subject to sub.  
 5 (5r), any property seized but not forfeited shall be returned to its rightful owner. Any  
 6 person claiming the right to possession of property seized may apply for its return  
 7 to the circuit court for the county in which the property was seized. The court shall  
 8 order such notice as it deems adequate to be given the district attorney and all  
 9 persons who have or may have an interest in the property and shall hold a hearing  
 10 to hear all claims to its true ownership. If the right to possession is proved to the  
 11 court's satisfaction, it shall order the property returned, subject to sub. (5r), if:

12 **SECTION 8.** 961.55 (5) (intro.) of the statutes <sup>other</sup> is amended to read:

13 961.55 (5) (intro.) <sup>other</sup> When property is forfeited under this chapter, the agency

14 whose officer or employee seized the property ~~may subject to sub. (5r)~~

15 **SECTION 9.** 961.55 (5) (am) of the statutes is created to read:

16 961.55 (5) (am) Donate it to a nonprofit organization or a unit of state or local

17 government, if the property is a computer forfeited under sub. (1) (h);

18 **SECTION 10.** 961.55 (5r) of the statutes is created to read:

19 961.55 (5r) Before selling or donating a computer seized under sub. (1) (h),  
 20 before returning it to its rightful owner, or before retaining it for its own use, the law  
 21 enforcement agency that seized it shall purge all data from the computer that are or  
 22 represent contraband or that were used in the commission of a crime and may purge  
 23 any other data or computer programs from the computer if the data or programs are  
 24 maintained or designed primarily to facilitate the commission of a crime.

25 **SECTION 11.** 968.20 (1) (intro.) of the statutes is amended to read:

as  
affected  
by 2005  
Wisconsin  
Act 91,

do one  
of the  
following  
← PLAIN

INS  
4/13

shall  
PLAIN

## SENATE BILL 403

1           968.20 (1) (intro.) Any person claiming the right to possession of property  
2 seized pursuant to a search warrant or seized without a search warrant may apply  
3 for its return to the circuit court for the county in which the property was seized or  
4 where the search warrant was returned. The court shall order such notice as it  
5 deems adequate to be given the district attorney and all persons who have or may  
6 have an interest in the property and shall hold a hearing to hear all claims to its true  
7 ownership. If Subject to ss. 961.55 (5r) and 973.075 (5r), if the right to possession is  
8 proved to the court's satisfaction, it shall order the property, other than contraband  
9 or property covered under sub. (1m) or (1r) or s. 173.12, 173.21 (4), or 968.205,  
10 returned if:

INS  
5/10  
11           **SECTION 12.** 973.075 (1) (b) 1m. (intro.) of the statutes is amended to read:

12           973.075 (1) (b) 1m. (intro.) Except Subject to sub. (1p), and except as provided  
13 in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the  
14 following ways:

15           **SECTION 13.** 973.075 (1) (b) 2m. c. of the statutes is repealed.

16           **SECTION 14.** 973.075 (1) (bg) of the statutes is amended to read:

17           973.075 (1) (bg) Any Subject to sub. (1p), any property used or to be used in the  
18 commission of a crime under s. 943.75 (2) or (2m), ~~but if the property is encumbered~~  
19 ~~by a bona fide perfected security interest that was perfected before the date of the~~  
20 ~~commission of the current violation and the holder of the security interest neither~~  
21 ~~had knowledge of nor consented to the commission of that violation, the holder of the~~  
22 ~~security interest shall be paid from the proceeds of the forfeiture.~~

23           **SECTION 15.** 973.075 (1) (bj) of the statutes is amended to read:

24           973.075 (1) (bj) Any Subject to sub. (1p), any property used or to be used in the  
25 commission of a crime under s. 943.74, ~~but if the property is encumbered by a bona~~

## SENATE BILL 403

## SECTION 15

1 ~~fide perfected security interest that was perfected before the date of the commission~~  
2 ~~of the current violation and the holder of the security interest neither had knowledge~~  
3 ~~of nor consented to the commission of that violation, the holder of the security~~  
4 ~~interest shall be paid from the proceeds of the forfeiture.~~

5 **SECTION 16.** 973.075 (1) (bm) of the statutes is amended to read:

6 973.075 (1) (bm) Any Subject to sub. (1p), any property used in the commission  
7 of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or  
8 940.32, but if the property is encumbered by a bonafide perfected security interest  
9 that was perfected before the date of the commission of the current violation and the  
10 holder of the security interest neither had knowledge of nor consented to the  
11 commission of that violation, the holder of the security interest shall be paid from the  
12 proceeds of the forfeiture.

13 **SECTION 17.** 973.075 (1) (d) of the statutes is amended to read:

14 973.075 (1) (d) A Subject to sub. (1p), a tank vessel that violates s. 299.62 (2)  
15 that is owned by a person who, within 5 years before the commission of the current  
16 violation, was previously convicted of violating s. 299.62 (2), but if the tank vessel is  
17 encumbered by a bona fide perfected security interest that was perfected before the  
18 date of the commission of the current violation and the holder of the security interest  
19 neither had knowledge of nor consented to the commission of that violation, the  
20 holder of the security interest shall be paid from the proceeds of the forfeiture.

21 **SECTION 18.** 973.075 (1) (e) of the statutes is amended to read:

22 973.075 (1) (e) Any recording, as defined in s. 943.206 (5), created, advertised,  
23 offered for sale or rent, sold, rented, transported or possessed in violation of ss.  
24 943.207 to 943.209 or s. 943.49 and, subject to sub. (1p), any electronic, mechanical  
25 or other device for making a recording or for manufacturing, reproducing, packaging

**SENATE BILL 403**

1 or assembling a recording that was used to facilitate a violation of ss. 943.207 to  
2 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom  
3 the recording or device is seized. ~~If a device subject to forfeiture under this paragraph~~  
4 ~~is encumbered by a bona fide perfected security interest that was perfected before the~~  
5 ~~date of the commission of the current violation and the holder of the security interest~~  
6 ~~neither had knowledge of nor consented to the commission of that violation, the~~  
7 ~~holder of the security interest shall be paid from the proceeds of the forfeiture.~~

8 **SECTION 19.** 973.075 (1) (f) of the statutes is created to read: ✓

9 973.075 (1) (f) Subject to sub. (1p), any computer, as defined in s. 943.70 (1)  
10 (am), used, with the knowledge and consent of its owner, in the commission of a  
11 crime.

12 **SECTION 20.** 973.075 (1p) of the statutes is created to read: ^

13 973.075 (1p) If any property under sub. (1) (b), (bg), (bj), (bm), (d), or (f) or any ✓ ✓ ✓ ✓  
14 device under sub. (1) (e) is encumbered by a bona fide perfected security interest that  
15 was perfected before the date of the commission of the current violation and the  
16 holder of the security interest neither had knowledge of nor consented to the  
17 commission of that violation, the holder of the security interest shall be paid from the  
18 proceeds of the forfeiture. ✓

19 **SECTION 21.** 973.075 (4) of the statutes is amended to read:

20 973.075 (4) When property is forfeited under ss. 973.075 to 973.077, the agency  
21 seizing the property may sell the property that is not required by law to be destroyed  
22 or transferred to another agency. The agency may retain any vehicle for official use  
23 or sell the vehicle. Subject to sub. (5r), the agency may sell any computer forfeited  
24 under sub. (1) (f) or, unless sub. (1p) applies, retain it for its own use or donate it to  
25 a nonprofit organization or a unit of state or local government. The agency seizing

INS  
7/19

## SENATE BILL 403

## SECTION 21

1 the property may deduct 50% of the amount received for administrative expenses of  
2 seizure, maintenance of custody, advertising and court costs and the costs of  
3 investigation and prosecution reasonably incurred. The remainder shall be  
4 deposited in the school fund as the proceeds of the forfeiture. If the property forfeited  
5 under ss. 973.075 to 973.077 is money, all the money shall be deposited in the school  
6 fund.

7 **SECTION 22.** 973.075 (5) (intro.) of the statutes is amended to read:

8 973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made  
9 with due provision for the rights of innocent persons under ~~sub.~~ subs. (1) (b) 2m., ~~(bg)~~,  
10 ~~(bm)~~, ~~(d)~~ and ~~(e)~~ (1p). Except as provided in sub. (5m) and subject to sub. (5r), any  
11 property seized but not forfeited shall be returned to its rightful owner. Any person  
12 claiming the right to possession of property seized may apply for its return to the  
13 circuit court for the county in which the property was seized. The court shall order  
14 such notice as it deems adequate to be given the district attorney and all persons who  
15 have or may have an interest in the property and shall hold a hearing to hear all  
16 claims to its true ownership. If the right to possession is proved to the court's  
17 satisfaction, it shall order the property returned, subject to sub. (5r), if:

18 **SECTION 23.** 973.075 (5r) of the statutes is created to read:

19 973.075 (5r) Before selling or donating a computer seized under sub. (1) (f),  
20 before returning it to its rightful owner, or before retaining it for its own use, the law  
21 enforcement agency that seized it shall purge all data from the computer that are or  
22 represent contraband or that were used in the commission of a crime and may purge  
23 any other data or computer programs from the computer if the data or programs are  
24 maintained or designed primarily to facilitate the commission of a crime.

25 **SECTION 24. Initial applicability.**

# SENATE BILL 403

1           (1) This act first applies to crimes committed on the effective date of this  
2    subsection.

3 (END)

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0426/lins  
MGD:.....

**INSERT 4/13**

*not* When a computer that is *described* subject to sub. (1p) is forfeited under sub. (1) (h), the  
agency whose officer or employee seized the property shall, subject to sub. (5r), sell  
the computer under par. (b). ✓

**INSERT 5/10**

**SECTION 1.** 968.20 (3) (a) and (b) of the statutes are amended to read:

968.20 (3) (a) First class cities shall dispose of dangerous weapons or  
ammunition seized 12 months after taking possession of them if the owner,  
authorized under sub. (1m), has not requested their return and if the dangerous  
weapon or ammunition is not required for evidence or use in further investigation  
and has not been disposed of pursuant to a court order at the completion of a criminal  
action or proceeding. Disposition procedures shall be established by ordinance or  
resolution and may include provisions authorizing an attempt to return to the  
rightful owner any dangerous weapons or ammunition which appear to be stolen or  
are reported stolen. If enacted, any such provision shall include a presumption that  
if the dangerous weapons or ammunition appear to be or are reported stolen an  
attempt will be made to return the dangerous weapons or ammunition to the  
authorized rightful owner. If the return of a seized dangerous weapon other than a  
firearm is not requested by its rightful owner under sub. (1) and is not returned by  
the officer under sub. (2), the city shall safely dispose of the dangerous weapon or,  
if the dangerous weapon is a motor vehicle, as defined in s. 340.01 (35), sell the motor  
vehicle following the procedure under s. 973.075 (4) (b) ✓ or authorize a law  
enforcement agency to retain and use the motor vehicle. If the return of a seized  
firearm or ammunition is not requested by its authorized rightful owner under sub.  
(1) and is not returned by the officer under sub. (2), the seized firearm or ammunition

1 shall be shipped to and become property of the state crime laboratories. A person  
2 designated by the department of justice may destroy any material for which the  
3 laboratory has no use or arrange for the exchange of material with other public  
4 agencies. In lieu of destruction, shoulder weapons for which the laboratories have  
5 no use shall be turned over to the department of natural resources for sale and  
6 distribution of proceeds under s. 29.934.

7 (b) Except as provided in par. (a) or sub. (1m) or (4), a city, village, town or  
8 county or other custodian of a seized dangerous weapon or ammunition, if the  
9 dangerous weapon or ammunition is not required for evidence or use in further  
10 investigation and has not been disposed of pursuant to a court order at the  
11 completion of a criminal action or proceeding, shall make reasonable efforts to notify  
12 all persons who have or may have an authorized rightful interest in the dangerous  
13 weapon or ammunition of the application requirements under sub. (1). If, within 30  
14 days after the notice, an application under sub. (1) is not made and the seized  
15 dangerous weapon or ammunition is not returned by the officer under sub. (2), the  
16 city, village, town or county or other custodian may retain the dangerous weapon or  
17 ammunition and authorize its use by a law enforcement agency, except that a  
18 dangerous weapon used in the commission of a homicide or a handgun, as defined  
19 in s. 175.35 (1) (b), may not be retained. If a dangerous weapon other than a firearm  
20 is not so retained, the city, village, town or county or other custodian shall safely  
21 dispose of the dangerous weapon or, if the dangerous weapon is a motor vehicle, as  
22 defined in s. 340.01 (35), sell the motor vehicle following the procedure under s.  
23 973.075 (4) (b). If a firearm or ammunition is not so retained, the city, village, town  
24 or county or other custodian shall ship it to the state crime laboratories and it is then  
25 the property of the laboratories. A person designated by the department of justice

1 may destroy any material for which the laboratories have no use or arrange for the  
2 exchange of material with other public agencies. In lieu of destruction, shoulder  
3 weapons for which the laboratory has no use shall be turned over to the department  
4 of natural resources for sale and distribution of proceeds under s. 29.934.

**History:** 1977 c. 260; 1977 c. 449 s. 497; 1979 c. 221; 1981 c. 160; 1983 a. 189 s. 329 (3); 1983 a. 278; 1985 a. 29 ss. 2447 to 2449, 3200 (35); 1987 a. 203; 1987 a. 332 s. 64; 1993 a. 90, 196; 1996 a. 157; 1997 a. 192, 248; 1999 a. 185; 2001 a. 16.

5 **INSERT 7/19**

6 **SECTION 2.** 973.075 (4) of the statutes is renumbered 973.075 (4) (a) and  
7 amended to read:

8 973.075 (4) (a) Subject to sub. (5r), when a computer is forfeited under sub. (1)  
9 (f), the agency seizing it shall sell it if sub. (1p) applies but may otherwise retain it  
10 for its own use or donate it to a nonprofit organization or a unit of state or local  
11 government. If a vehicle is forfeited under ss. 973.075 to 973.077, the agency may  
12 retain it for official use or sell it. When other property is forfeited under ss. 973.075  
13 to 973.077, the agency seizing the property may sell the property that is not it unless  
14 required by law to be destroyed destroy it or transferred transfer it to another agency.

15 ~~The agency may retain any vehicle for official use or sell the vehicle. The~~

16 (b) When an agency seizing the property sells property under par. (a), it may  
17 deduct 50% of the amount received for administrative expenses of seizure,  
18 maintenance of custody, advertising, and court costs and the costs of investigation  
19 and prosecution reasonably incurred. The remainder shall be deposited in the school  
20 fund as the proceeds of the forfeiture. If the property forfeited under ss. 973.075 to  
21 973.077 is money, all the money shall be deposited in the school fund.

**History:** 1981 c. 267; 1985 a. 245, 258; 1987 a. 348; 1989 a. 263; 1993 a. 92, 169, 459, 491; 1995 a. 290, 448; 1997 a. 35, 285; 1999 a. 45, 51, 186; 2001 a. 16, 91.

**Emery, Lynn**

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**From:** Gasper, Greg  
**Sent:** Thursday, February 02, 2006 3:50 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 05-0426/1 Topic: Seizure and disposition of computers used to commit crimes

Please Jacket LRB 05-0426/1 for the SENATE.